IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3936 OF 2006

Sandipan Janardhan Kadwale
and Ors. .. Applicants
Versus
State of Maharashtra .. Respondent

Mr.P.R.Arjunwadkar for applicants
Mr.R.Y.Mirza, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 16th November 2006.

P.C.

. Heard Mr.Arjunwadkar for applicants and Mr.Mirza, A.P.P. for State. Applicants apprehend arrest in connection with C.R.No.121 of 2006 registered with Indapur Police Station. Offences are punishable under section 304 read with 34 I.P.C.

2. The dead body of one Sadhu @ Suraj

Makhare residing at Indapur was found on the road in village Indapur. Body was in semi-naked condition. His motor cycle was parked and clothes were found nearby.

3. Nephew of the deceased gave report of accidental death. It appears that F.I.R. was registered after the wife of the deceased and other relatives gave an application to the police to hand over investigation to C.I.D.

4. The allegation is that the deceased had illicit relations with sister of applicants before me. Applicants enraged by this act of the deceased and objecting to relationship, confronted the deceased on several occasions. It appears that there was a scuffle and altercation and the deceased was warned on several occasions. It is in such circumstances, that the applicants apprehend their arrest. Their application for anticipatory bail preferred some time in June

2006 was rejected by the trial court on 16th August 2006.

5. Mr.Arjunwadkar, firstly contends that the cause of death as indicated in the Post Mortem (PM) report is Pulmonary oedema. This is not an unnatural leave alone homicidal, death. According to Mr.Arjunwadkar once there is no definite indication that the death occurred was homicidal, there was no question of commencing any investigation. He submits that even if the Viscera is preserved and further report is awaited does not mean that the probable cause of death indicated in the P.M. report must be discarded. That apart, if at all anybody had grievance about alleged illicit relations it was the husband of applicants sister and neither has he complained nor has he been arrayed as an accused. Thirdly and lastly he submits that the applicants are serving outside Indapur. One of the applicant is working at a hostel and is

posted therein for night duty as well. On the date of incident, he was on duty and there is a certificate to that effect. The other applicant is serving at Mumbai and, therefore, there is no question of his presence at Indapur on the relevant date. He submits that the application being rejected by the trial court as early as in August 2006 but no arrest is effected of the other concerned persons, this is a fit case where the applicant should be granted pre-arrest bail. Even if the investigations are in progress. Unless the prosecution comes with a strong case of homicidal death, there was no necessity of F.I.R. being registered and the investigations commenced. In any event, they ought to be fair and impartial.

6. On the last occasion this application was placed before me and in the light of the contents of the same, I had given an opportunity to the prosecution to file a reply. Accordingly, a

reply has been filed by A.P.I. presently attached to Indapur police station. Copy of this reply has been forwarded to the applicants' Advocate.

7. It has been very clearly stated in the affidavit that F.I.R. was registered at the instance of the complainant, Rekha, wife of deceased. Initially, three persons including present applicants were shown as accused. Thereafter, the lady with whom deceased had illicit relations Seema Waghmare, has also been arrayed as accused. Before the offence was registered, A.D.R. was also registered. Incident occurred between night of 19th July and 20th July 2006. One Balu Narayan and Seema Waghmare were arrested on 22nd July and 18th August 2006 i.e. the date after the applicants' application was rejected by the learned Additional Sessions Judge.

8. My attention is also invited to para 4 of the affidavit wherein the I.O. has specifically urged that though inquest panchanama of the dead body was performed, no fresh injuries were noticed. Thereafter the dead body was sent for P.M. to Government Hospital. Probable cause of death mentioned in P.M. report is Pulmonary oedema but viscera was preserved for final opinion of cause of death. There is specific case made out in the affidavit that relationship of the deceased with co-accused Seema has been confirmed by statements recorded subsequently on 10th October 2006 as also by the minor son of deceased.

9. Based upon this affidavit, the contention of Mr.Mirza is that the offence is grave and serious. It is punishable with life imprisonment or death. Investigations are in progress. It is clear from the record that at this stage that illicit relations and the incident of September

2005 and thereafter, spell out the motive on the part of the accused in putting an end to the life of deceased. He submits that the plea of alibi apart from not being permissible to be gone into in details at this stage, is ex-facie false. He submits that the letter issued by Arogya Prathisthan, Indapur does not show that the applicant No.1 was present in the premises of the Hostel through out the night. Incident had taken place at Indapur and the distance between the place where applicant No.1 works and Indapur is about half kilometre. Applicant No.2's defence also cannot be gone into. He has invited my attention to the statements referred to in the affidavit including that of co-employees of applicant No.1 who have specifically stated that applicant No.1 left the hostel premises without informing anybody on the relevant date and was not present there in the night.

10. Grant of anticipatory bail is not a

normality but an exception. Ingredients of section 438 of Cr.P.C. have to be satisfied before the application can be considered and relief granted in terms thereof. Further, when the offence alleged is of murder, such relief should not ordinarily be granted. The matter is at the stage of investigation and the co-accused including the lady with whom deceased had illicit relations have been arrested. Final report on the cause of death is still awaited. Investigations are at a crucial stage. For the purpose of proper and complete investigations, custodial interrogation of applicants is necessary, more so, in the light of materials that are placed before me on affidavit.

11. In my view, therefore, it will not be proper to entertain this application. I am, therefore, not in agreement with Mr.Arjunwadkar that merely because the cause of death is yet to be ascertained finally, the P.M. report must be

taken as it is and conclusive. That is an aspect which will be covered by further investigations and it will not be fair and proper to go into the same at this stage. Similarly, merely because the plea of alibi is raised, this is not a stage to scrutinise the materials in that behalf. Such pleas are open to be raised at an appropriate stage. In such circumstances, grant of pre-arrest bail will not be proper. Application, therefore, is rejected.

(S.C.Dharmadhikari, J)